

REPUBLIC OF SOUTH AFRICA

ANTI-CORRUPTION COMMISSION BILL

TABLE OF CONTENTS

<i>Sections</i>	<i>Pages</i>
CHAPTER 1	
DEFINITIONS	
1. Definitions	5
CHAPTER 2	
ANTI-CORRUPTION COMISSION	
<i>Part 1</i>	
<i>Establishment of the Commission</i>	
2. Establishment of the Commission	8
3. Powers of the Commission	
4. Structure of the Commission	
5. Commissioners	9
6. Appointment of Commissioners	
7. Term of office of Commissioners	10
8. Vacancy of the office of a Commissioner	
9. Requirements for consideration for the office of Commissioner	
10. Mandate of Commissioners	11
<i>Part 2</i>	
<i>Operation and procedure of the Commission</i>	
11. Operation of the Commission	12
12. Reports	13

CHAPTER 3

SPECIAL OPERATIONS UNIT

13. Special Operations Unit	14
14. Powers of the Special Operations Unit	15
15. Investigators	16
16. Investigations	

CHAPTER 4

RESEARCH, PREVENTION AND POLICY FORMULATION UNIT

17. Research, Prevention and Policy Formulation Unit	17
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CHAPTER 5

EDUCATION AND PUBLIC RELATIONS UNIT

18. Education and Public Relations Unit	
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CHAPTER 6

ADMINISTRATIVE UNIT

19. Establishment of the Administrative Unit	19
20. Security screening	

CHAPTER 7

TRAINING

21. Basic Training	20
22. Specialised Training	

CHAPTER 8

PUBLIC ACCESS TO THE COMMISSION

- | | |
|--|----|
| 23. Access to the Commission | 21 |
| 24. Establishment of provincial offices | |

CHAPTER 9

FINANCIAL PROVISIONS

- | | |
|--|----|
| 25. Funding | |
| 26. Expenditure reports | |
| 27. Accounts and auditing thereof | 22 |

CHAPTER 10

REMUNERATION AND ALLOWANCES

- | | |
|---|----|
| 28. Remuneration and allowances of Commissioners, Administrators and Staff | 22 |
|---|----|

CHAPTER 11

ACCOUNTABILITY AND CHECKS AND BALANCES

- | | |
|--|----|
| 29. Oversight Committees | 23 |
| 30. Complaints about the Commission | |

CHAPTER 12

GENERAL PRINCIPLES OF THE COMMISSION

- | | |
|---|----|
| 31. General principles of the Commission | 24 |
| 32. Code of Conduct | |

33. Disclosure of financial interests

SCHEDULE 1

OATH OF OFFICE

26

SCHEDULE 2

CODE OF CONDUCT

27

SCHEDULE 3

STRUCTURE OF THE COMMISSION

31

CHAPTER 1

DEFINITIONS

Definitions

1. In this Act, except where the context indicates otherwise—

- (a) “**The Constitution**” means the Constitution of the Republic of South Africa,
- (b) “**Bill of Rights**” means the Bill of Rights contained in Chapter 2 of the Constitution;
- (c) “**National Assembly**” means the National Assembly of the Parliament of the Republic of South Africa;
- (d) “**Corruption**” means Corruption as defined in section 1 of the Prevention and Combating of Corrupt Activities Act, 2003 (Act 12 of 2004), as amended from time to time;
- (e) “**Commission**” means the Anti-Corruption Commission established by section 2 of this Act;
- (f) “**Commissioners**” means the Head Commissioner, as well as all of the Commissioners appointed in terms of Schedule 1 and section 5 of this Act;

- (g) “**Head Commissioner**” means the Head Commissioner of the Anti-Corruption Commission;
- (h) “**Director**” mean the Directing Commissioner of a specific Unit of the Commission;
- (i) “**Assisting Director**” means the Assisting Director to the Director of a specific Unit of the Commission;
- (j) “**Unit**” mean an official body responsible for specific functions and duties within the Commission;
- (k) “**Chairperson**” means the Commissioner elected by the Commissioners present at a meeting to preside, with respect to that meeting only, over the meeting of the Commissioners in the absence of the Head Commissioner;
- (l) “**Administration**” means the Administrative Unit of the Anti-Corruption Commission;
- (m) “**Committee**” means a body of elected persons for participation in a specific decision-making process.
- (n) “**Interests**” means any direct or indirect interest of a person or a person(s) connected to him or her in—
- (i) all property, whether real or intangible, movable or immovable;
 - (ii) income;
 - (iii) gifts;
 - (iv) financial or other contributions to any travel or holiday, received or made;
 - (v) shareholdings or other beneficial interests in Public or Private Bodies;
 - (vi) partnerships;
 - (vii) trusts;
 - (viii) positions (whether remunerated or not) held in, or membership of Public or Private Bodies;
 - (ix) occupations, trades, professions or vocations;
 - (x) debts;
 - (xi) payments of money or transfers of property to persons or Person Connected to them by, or under arrangements made by, persons or Person Connected to them; and
 - (xii) any other direct or indirect benefits, advantages or liabilities, whether pecuniary or not;

- (o) “**Incriminating information**” means information on criminal or inappropriate behaviour that is substantiated by sound and objective evidence;
- (p) “**Independent training facility**” means a facility aimed at the purposes of training staff in effective anti-corruption methods that is not located in the South African Police Services or any other government sector;
- (q) “**Security screening**” means inspecting of an applicant’s background, employment history and criminal record;
- (r) “**Government**” means the Government of the Republic of South Africa;
- (s) “**Governmental bodies**” includes the Public Protector, the South African Police Service, the Auditor General, the Human Rights Commission, the National Prosecuting Authority and the Public Service Commission;
- (t) “**Non-governmental bodies**” means domestic law-enforcement institutions including but not limited to Corruption-Watch, the National Intelligence Agency and the Institute for Accountability in South Africa;
- (u) “**Public Sector**” means the areas of society concerned with the Government, any ministry or department of the Government, any local authority, parastatal board, council, authority, commission or other body appointed by the Government, or established by or under any other law of the Republic of South Africa, and shall include state owned enterprises and employees and office bearers of Public Bodies;
- (v) “**Private Sector**” means the areas of society concerned with any person or organisation, not being Public Sector area, and including but not limited to voluntary associations, charitable institutions, trade unions, companies, close corporations, partnerships, trusts or clubs, and shall include employees and office bearers of Private bodies;
- (w) “**International law-enforcement institutions**” includes all countries that are part of the United Nations Convention Against Corruption;
- (x) “**Academic bodies and institutions**” means all secondary and tertiary institutions in the Republic of South Africa.
- (y) “**Financial Year**” means the period of 12 calendar months beginning on 1 April to the 31 March of the following year.
- (z) “**Regulations**” means regulations made under this Act;
- (aa) definitions relating to “Corruption” as set out in Section 1 of the Prevention and Combating of Corrupt Activities Act, 2003 (Act 12 of 2004),

as amended from time to time, shall apply and the Interpretation Section of that Act is also applicable in the interpretation of this Act.

CHAPTER 2

ANTI-CORRUPTION COMMISSION

Part 1

Establishment of Anti-Corruption Commission

Establishment of the Commission

2. The Commission is hereby established in terms of Chapter 9 of the Constitution and must therefore—
 - (a) be subject only to the Constitution and the law and exercise its power without fear, favour or prejudice in terms of section 181 (2) of the Constitution;
 - (b) be assisted by other organs of state through legislative and other measures to ensure its impartiality, dignity, independence and effectiveness in terms of section 181 (3) of the Constitution;
 - (c) be free from political and any other interference from any person or organ of state in its functioning; and
 - (d) be accountable only to people of the Republic as represented by the National Assembly.

Powers of the Commission

3. The Commission has all the powers that are necessary for the effective performance of its duties and functions.

Structure of the Commission

4. The functions of the Commission are divided as follows—
 - (a) the Special Operations Unit;
 - (b) the Research, Prevention and Policy Formulation Unit;

- (c) the Education and Public Relations Unit;
- (d) the Administrative Unit.

Commissioners

5. The Commission consists of the following Commissioners in terms of Schedule 3 of this Act—
- (a) the Head Commissioner;
 - (b) the Deputy Head Commissioner;
 - (c) three Directing Commissioners including—
 - (i) the Director of Special Operations;
 - (ii) the Director of Research, Prevention and Policy Formation; an
 - (iii) the Director of Education and Public Relations; and
 - (d) Four Assistant Directors including—
 - (i) two Assistant Directors of Special Operations;
 - (ii) the Assistant Director of Research, Prevention and Policy Formation;
and
 - (iii) the Assistant Director of Education and Public Relations; and

Appointment of Commissioners

6. (1) The Head Commissioner and the Deputy Head Commissioner shall in terms of section 193 of the Constitution be appointed by the President on the recommendation of a Committee established by the National Assembly.
- (2) In establishing the Committee mentioned in subsection (1) of this act, the National Assembly shall ensure that the participants proportionately reflect the parties of its body.
- (3) The Committee's recommendations shall be approved by a majority vote in the National Assembly.
- (4) The involvement of the public in the recommendation process shall be promoted in terms of section 59 of the Constitution, all meetings shall thus be conducted in an open manner and prevailing public opinion must be reflected in all decisions taken by the Committee.
- (5) The public may object to the appointment of a particular person to the office of

Commissioner.

(6) The Head Commissioner shall, in conjunction with the Deputy Head Commissioner and the four Advisory Committees established by section 21 of this Act, appoint the three Directing Commissioners.

Term of office of Commissioners

7. Each Commissioner shall serve a non-renewable period of seven years.

Vacancy of the office of a Commissioner

8. (1) The office of a Commissioner becomes vacant—
- (a) if such a Commissioner is removed from office in terms section 194 (2) (a) of the Constitution;
 - (b) if such a Commissioner tenders their resignation, in writing, to the President;
 - (c) if such a Commissioner dies or is otherwise incapacitated; or
 - (d) if the Commissioner reaches the age of seventy three years.
- (2) A vacancy shall be filled as soon as practicably possible in accordance with the procedure referred to in section 7 of this Act.

Requirements for consideration for the office of Commissioner

9. (1) A person is qualified for consideration for the office of Commissioner if that person—
- (a) is a citizen of the Republic of South Africa;
 - (b) holds a degree or an equivalent qualification from a tertiary institution recognised in South Africa;
 - (c) is a fit and proper person
 - (d) is a member of an official professional body;
 - (e) has made a significant contribution to his or her respective field;
 - (f) has integrity, honesty and displays ethical conduct;
 - (g) has knowledge and experience of not less than eight years in any of the following fields—
 - (i) Ethics and governance

- (ii) Law
 - (iii) Public administration
 - (iv) Economics
 - (v) Investigation
 - (vi) Accounting, Auditing, Taxation or Finance
- (2) A person is qualified to be considered for appointment as the Head Commissioner or Deputy Commissioner provided—
- (a) they meet the requirements outlined in section 9 (1) of this Act; and
 - (b) they are a Judge of the High Court, Supreme Court of Appeal or Constitutional Court relieved of service in terms of the Judges' Remuneration and Conditions of Employment Act 47 of 2001.
- (3) A person is qualified to be considered for appointment as a Directing Commissioner or an Assisting Director Commissioner if they meet the requirements outlined in section 9 (1) of this Act.
- (4) When evaluating the qualifications of a candidate for appointment, due consideration shall be given to the specific requirements of the office to be filled.
- (5) A person will not be considered for selection as a Commissioner if that person—
- (a) is a member of a governing body of a political party;
 - (b) is a unrehabilitated insolvent;
 - (c) was convicted of a crime; or
 - (d) was removed from public office or the directorship of a public or private company.

Mandate of Commissioners

- 10.** (1) The Head Commissioner is responsible for—
- (a) acting as the official Spokesperson of the Commission;
 - (b) being the accounts officer of the Commission;
 - (c) considering investigative reports from the Special Operations Unit;
 - (d) considering reports on staff security screenings and the allocation or refusal of security certificates to staff of the Commission;
 - (e) authorising investigations;
 - (f) overseeing all of the functions of the Commission;

- (g) handling matters of discipline and complaints against the Commission or any of its staff;
 - (h) assessing reports submitted by the one or more of the oversight committees.
 - (i) chairing meetings of the Commission; and
 - (j) having the deciding vote in the event of a deadlock of votes during the decision-making process of the Commission.
- (2) The Deputy Commissioner is responsible for—
- (a) assisting the Head Commissioner in the execution of his tasks and responsibilities; and
 - (b) assuming the responsibilities of the Head Commissioner in the event of his or her absence.
- (3) The Directing Commissioners is responsible for the performance of any functions required of them by their particular function within the Commission.
- (4) All of the Commissioners shall—
- (a) advise the Commission in formulating policy guidelines; and
 - (b) ensure that the Commission and its staff, including the Head Administrator and Deputy Head Administrator perform their duties to the highest standards possible in accordance with this Act and the Constitution.
 - (c) give strategic direction to the Commission in the performance of its functions as stipulated in this Act and Chapter 9 of the Constitution.
 - (d) establish and maintain strategic linkages and partnerships with other stakeholders in the Rule of Law and in combating corruption in both the public and private sectors.
 - (e) deal with reports, complaints of abuse of power, impropriety and other forms of misconduct on the part of the Commission or its staff.
 - (f) deal with reports of conduct amounting to maladministration, including but not limited to, delay in the conduct of investigation and unreasonable invasion of privacy by the Commission or its staff.

Part 2

Operations and procedures of the Commission

Operation of the Commission

- 11.** (1) The Commission is a decision-making body focussed on coordinating the investigation, prevention, education and fighting of corruption in the Republic of South Africa.
- (2) Subject to the provisions of this Act, the Commission may regulate its own proceedings and procedures.
- (3) The Commission shall meet as often necessary for the carrying out of its mandate but no less than four times in a Financial Year.
- (4) The Head Commissioner may call additional meetings of the Commission at his discretion provided that all of the Commissioners are given at least 14 days' notice of the meeting.
- (5) If the urgency of a matter does not permit the notice as contemplated by section 11 (4) of this Act, the Head Commissioner may call a meeting on short notice.
- (6) Should the Head Commissioner be unable to attend a meeting, the Deputy Head Commissioner shall act as the Chairperson and hold the deciding vote in accordance with section 10 (2) (b) of this Act.
- (7) Should both the Head and Deputy Head Commissioners be unable to attend a meeting, the Commissioners present at the meeting shall elect Chairperson from among them.
- (8) The Commission may call a specialist(s) to attend a meeting if they feel the person(s) professional knowledge and input will be helpful to the concerns of the meeting.
- (9) detailed minutes shall be taken at all meetings of the Commission.

Reports

- 12.** (1) The Commission as a whole shall an annual report to be prepared for the end of each financial year and submit the report to—
- (a) the National Assembly, within three months after the end of the financial year to which it relates;
 - (b) the four oversight Committees; and
 - (c) the public, via publication in the Government Gazette and other media tools set up by the Education and Public Relations Unit in terms of section 24 (c) of this Act.

- (2) This report shall include—
- (a) the financial statements of the Commission;
 - (b) a description of the activities of the Commission;
 - (c) any recommendations made by the Commission and the action taken therefrom;
 - (d) a submission on the impact of the exercise of its operations;
 - (e) a submission on any obstacles to the achievements of the objects and functions of the Commission;
 - (f) any information set out in quarterly reports that is of relevance to the annual report;
 - (g) any statistical information deemed appropriate by the Commission regarding complaints, investigations and reports.
- (3) The Commission shall make regular and thorough reports at least quarterly to the—
- (a) National Assembly;
 - (b) oversight Committees; and
 - (c) public the via publication of the reports in the Government Gazette and other media tools set up by the Education and Public Relations Unit in terms of section 24 (c) of this Act.
- (4) These Quarterly reports shall contain—
- (a) Reports on activities;
 - (b) Statistical information gathered in the course of research and analysis; and
 - (c) prosecution activities including convictions and acquittals.
- (5) Each oversight committee shall submit a quarterly review report to the Head Commissioner.

CHAPTER 3

SPECIAL OPERATIONS UNIT

The Special Operations Unit

- 13.** (1) The Special Operations Unit is the law-enforcement branch of the Commission and is concerned with investigation and prosecution of corrupt activities.
- (2) The functions of the Special Operations Unit will be headed by two Assisting Directing Commissioners respectively concerned with corrupt activities in—
- (a) The Private Sector; and
 - (b) The Public Sector.
- (3) The Special Operations Unit will establish a 24 hour reports centre to facilitate the reception of complaints from—
- (a) a regional office of the Commission;
 - (b) any organ of state;
 - (c) governmental department;
 - (d) juristic person;
 - (e) Public or private company; or
 - (f) Individual.
- (4) A complaint received must be examined by the Commission which will decide whether or not to pursue investigation. The Commission may refer complaints to existing anti- corruption bodies for investigation.
- (5) The Special Operations Unit will assume responsibility for conducting investigations into cases earmarked for further action.
- (6) The Special Operations Unit shall submit a report to the Commission for their consideration.
- (7) If the Commission decides that there is sufficient evidence for prosecution they shall refer the case, with recommendations regarding prosecution, to the National Prosecuting Authority.

Powers of the Special Operations Unit

- 14.** (1) The Special Operations Unit has the powers to—
- (a) upon the acquisition off a warrant, search a premise;
 - (b) require the person(s) to surrender travel documents, if relevant to the investigation; and
 - (c) in prosecution, produce items found during the course of the investigation and
 - (d) Lawfully arrest person(s) without prejudice to the specifications of subsection 9(b)(ii).

(2) The Special Operations Unit shall be empowered to select any staff necessary to performance of their specialised functions through an open, transparent and competitive recruitment process.

Investigators

15. (1) The Head Commissioner or the Director of Special Operations as authorised by the Head Commissioner person may conduct an investigation on behalf of the Commission.

(2) For the purposes of an investigation, the Head Commissioner and an investigator shall have the powers, privileges and immunities of a police officer in addition to any other powers the Head Commissioner or investigator has under this Act.

(3) Shall have identification documents and identification cards, signed by the Head Commissioner, identifying them as authorised investigators.

Investigations

16. (1) Except in extenuating circumstances, the Commission must inform a person(s) that they are suspected of, connected to or associated with corrupt activities and are required to fully cooperate with the Commission's investigations.

(2) Such person(s) may be required to provide the Commission, within a reasonable time specified in the notice, with a written statement—

(a) Outlining the suspected person's financial or personal interests and the times at which these interests were acquired;

(b) Stating, in relation to these interests that were acquired at or about the time of suspected corruption, whether the interests were acquired by purchase, gift, inheritance or in some other manner, and what considerations, if any, were given with the interests;

(c) Identifying all person(s) connected and these person(s) interests; and

(d) Providing any other information that is relevant to the investigative process.

(8) A person or persons who neglect to or fail to comply with the above requirements are guilty of an offence and are liable, on conviction, to a fine of not over R100 000 or a maximum of 5 years in jail, in terms of the Criminal Law Amendment Act no. 5 of 1997.

(9) The powers of the Commission under this section may be exercised only by a Commissioner.

CHAPTER 4

RESEARCH, PREVENTION AND POLICY FORMULATION UNIT

Research, Prevention and Policy Formation Unit

- 17.** (1) The Research, Prevention and Policy Formation Unit will be responsible for—
- (a) performing quantitative and qualitative research on the phenomena of corruption;
 - (b) participating in international conferences about corruption;
 - (c) formulating standard preventative strategies and policies to be used in both public and private institutions; and
 - (d) acting in an advisory capacity to the public and private sectors of society with the approval of the Commission
- (2) The Research, Prevention and Policy Formation Unit—
- (a) shall present their preventative policies and complied reports to the Commission for the Commission's consideration;
 - (b) promote and develop standards and best practices in integrity and anti-corruption in collaboration with appropriate public or private bodies;
 - (c) be empowered to select any staff necessary to performance of their specialised functions through an open, transparent and competitive recruitment process, with the signed approval of either the Head Commissioner or the Deputy Head Commissioner.

CHAPTER 5

EDUCATION AND PUBLIC RELATIONS UNIT

Education and Public Relations Unit

- 18.** (1) The Education and Public Relations Unit is responsible for raising public awareness and fostering a culture of corruption fighting and ethical leadership by—
- (a) conducting anti-corruption campaigns;
 - (b) defining and promoting, the ethical leadership in—
 - (i) Schools;
 - (ii) Companies;
 - (iii) Universities;
 - (iv) Workplaces; and
 - (v) Governing bodies.
 - (c) offering workshops to the above sectors on preventative measures against corruption, using the information of which shall be gained from the Research, Prevention and Policy Formation Unit;
 - (d) creating accessibility to the Commission and its mandate through social media techniques; and
 - (e) conducting public discussions on the nature, extent and dangerous effects of corruption and what can be done about it within society.
- (2) In terms of Public Relations the Commission shall regularly publicise its activities to—
- (a) The public;
 - (b) The international community
- (3) The Education and Public Unit shall be empowered to select any staff necessary to performance of their specialised functions through an open, transparent and competitive recruitment process, with the signed approval of either the Head Commissioner or the Deputy Head Commissioner.
- (4) In fulfilling its functions and duties, the Commission may cooperate and collaborate with other appropriate persons or bodies and it shall be the duty of these persons or bodies to afford the Commission any professional assistance.
- (5) Such persons or bodies shall include but are not limited to—
- (a) Government bodies
 - (b) Non-governmental bodies
 - (c) International law-enforcement institutions
 - (d) Domestic law-enforcement institutions
 - (e) Academic bodies and institutions

CHAPTER 6

ADMINISTRATIVE UNIT

Establishment of the Administrative Unit

19. (1) The Commission is assisted by an the Administrative Unit which is responsible for—
- (a) the day to day running of the Commission;
 - (b) human relations and staff management;
 - (c) logistics of the Commission’s professional activities such as transport, accommodation and supplies;
 - (d) training and development; and
 - (e) managing any administrative paperwork given to them by the Commissioners and personnel.
- (2) The administrative staff shall consist of—
- (a) the Head Administrator;
 - (b) the Deputy Head Administrator; and
 - (c) technical, administrative, professional and support staff
- (3) The Commission must select a suitable and appropriately qualified Head Administrator and Deputy Head Administrator through an open, transparent and competitive recruitment process.
- (4) All other staff of the Commission shall be selected through open, transparent and competitive recruitment process.

Security screening

20. (1) The Administrative Unit, in conjunction with the National Intelligence Agency, shall conduct security screenings of all prospective applications to the Commission.
- (2) The Head Commissioner shall assess the security report and, if satisfied that the prospective applicant does not pose a security risk and will not undermine the objectives and purposes of the Commission in any way, may issue a certificate to that person to certifying that they have successfully undergone a security clearance.
- (3) In the event of incriminating information coming to light at a later stage, the Head

Commissioner may, through a fair and just procedure, revoke the security certificate of any member of staff.

(4) In the event of a revocation the staff member shall lose their position and may not, at any stage be eligible for reappointment to the Commission.

CHAPTER 7

TRAINING

Basic training of all Commission staff

21. All staff entering the Commission excluding those of the Special Operations Unit shall go through induction training which shall involve—

- (a) a basic induction course according to the line of work to which they will be assigned;
- (b) annual continuous training workshops that focus on—
 - (i) Leadership;
 - (ii) Team building;
 - (iii) Management of stress and change;
 - (iv) Ethics in leadership and conduct; and
 - (v) Personal effectiveness.

Specialised training for Investigators

22. (1) Specialised training is mandatory for all Investigators of the Commission

(2) The Commission is responsible for formulating a specialised training programme to create an elite body of Investigators.

(3) The anti-corruption training programmes and trainers must be outsourced from leading law-enforcement and anti-corruption institutions worldwide, until such time as an independent training facility is established in South Africa.

(4) In the formulation of their anti-corruption training programme, the Commission must—

- (a) consider the effective training methods practiced by successful leading foreign anti-corruption and law-enforcement groups across the globe;

- (b) consider international standards of ethical investigation and law-enforcement; and
- (c) ensure that the training programmes are specifically tailored to the South African context.

CHAPTER 8

PUBLIC ACCESS TO THE COMMISSION

Access to the Commission

- 23.** Access to the Commission shall be ensured through—
- (a) the establishment of an Anti-Corruption Unit in each High Court of South Africa or major city/town in provinces without a High Court;
 - (b) the establishment of circuit Anti-Corruption Unit twice annually; and
 - (c) the establishment of media tools by the Education and Public Relations Unit.

The Establishment of the Provincial Offices

- 24.** The Commission must establish an office in each province for the purpose of facilitating access to the Commission and implementing its investigations, research and education at regional level.

CHAPTER 9

FINANCIAL PROVISIONS OF THE COMMISSION

Funding

- 25.** (1) The Commission shall be receive funds—
- (a) granted to it by Parliament, the amount of which shall not be less than 1% (one percent) of tax revenues;
 - (b) anonymous grants, gifts or donations; and
 - (c) any other funds generated through the activities of the Commission.

Expenditure reports

26. At least three months before the commencement of each financial year, the Commission shall prepare estimates of the revenue and expenditure of the Commission for that year. This estimate shall make provision for payment of remuneration in respect to the Commissioners and staff of the Commission.

Accounts and auditing thereof

27. (1) The Head Commissioner is the Accounting Officer of the Commission.
- (2) In this section, “Accounting Officer” shall mean the Accounting Officer as contemplated in section 36 of the Public Finance Management Act, 1999 (Act 1 of 1999), as amended from time to time.
- (3) The Accounting Officer shall—
- (a) account for money received or paid out for or on account of the office of the Commission; and
 - (b) ensure that the necessary accounting and other related records of the income, expenditure, assets and liabilities of the Commission are kept.
- (4) The Auditor General shall audit the annual accounts of the Commission.

CHAPTER 10

RENUMERATION AND ALLOWANCES

Remuneration

28. The Commissioners, Head Administrator, Deputy Head Administrator and staff shall be paid such remuneration or allowances as determined by the Commission itself provided that—
- (a) the salary of the Head Commissioner shall not be less than the salary level of the National Commissioner of the Police Service;
 - (b) the salary of the Commissioners shall not be less than 75% (seventy five percent) of the salary of the Head Commissioner; and

- (c) the Commission submits the details of the pay role of all of the staff of the Commission to the National Assembly for approval.

CHAPTER 11

ACCOUNTABILITY AND CHECKS AND BALANCES

Oversight Committees

- 29.** (1) The Commission shall be accountable to four committees made up of 9 (nine) responsible volunteers from the following areas—
- (a) Crime Prevention organisations;
 - (b) Journalism and Media organisations;
 - (c) Academic communities;
 - (d) Law-enforcement organisations;
 - (e) Political organisations; and
 - (f) Financial experts.
- (2) The Commission shall request the Public Protector to select these four committees from the volunteers.
- (3) The voluntary committees shall be active for a period of two years.
- (4) The Committees shall be divided as follows—
- (a) a committee assessing the Commission in general;
 - (b) a committee assessing the Special Operations Unit;
 - (c) a committee assessing the Research, Prevention and Policy Formation Unit;
 - and
 - (d) a committee assessing the Education and Public Relations Unit.
- (5) These four committees shall—
- (a) observe and advise the Commission on its activities;
 - (b) communicate how the actions are coming across to the public;
 - (c) advise on how the Commission can improve;
 - (d) communicate what actions of Commission appear to be effective; and
 - (e) meet whenever they feel it necessary but not less than three times a year.

Complaints about the Commission

30. The Public Protector shall, after consultation with the Auditor General, appoint a retired judge in order to investigate complaints about the Commission.

CHAPTER 12

GENERAL PRINCIPLES OF THE COMMISSION

General Principles

31. (1) The Commission must be broadly representative of the South African people with employment and personnel management practices based on ability, objectivity, fairness, and the need to address imbalances of the past to achieve broad representation.

(2) The Commission shall adhere to the principles of—

- (a) the Rule of Law;
- (b) the spirit and purport of the Bill of Rights;
- (c) the promotion of and adherence to high standards of professional ethics;
- (d) efficient use of resources;
- (e) the providing of services impartially, fairly, equitably and without bias;
- (f) timely response to people's needs;
- (g) encouragement of the public to participate in policy making;
- (h) accountability both to the National Assembly and its committees;
- (i) Transparency and timely, accessible and accurate information; and
- (j) Good human resource management and career development practices to maximise human potential.

Code of Conduct

32. The Commissioners shall adhere to the Code of Conduct as set out in the Schedule 2 of this Act.

Disclosure of Financial and Personal Interests

- 33.** (1) If any of the Commissioners come to the realisation that they have a financial or personal interest in the matter being discussed in a meeting, they shall declare this interest as soon as possible and shall not take part in the rest of the discussion of that matter.
- (2) If the person vested with this financial or personal interest conceals their interest intentionally they, following a disciplinary proceeding as set out in the Schedule 2 of this Act, shall be removed from their position.
- (3) Neither a Commissioner nor a member the Administrative Unit, who has a direct or indirect financial interest in the matter, shall transact any business or trade with the Commission.

SCHEDULE 1

OATH OF OFFICE

I, _____ having been appointed (the Head Commissioner/Deputy Head Commissioner/Commissioner/Head Administrator/ Deputy Head Administrator) of the Anti-Corruption Commission do swear/solemnly affirm that I will at all times obey, respect, protect and uphold and enforce all other laws of the Republic of South Africa. I will faithfully and fully, impartially and to the best of my knowledge and ability, discharge the trust, perform the functions and exercise powers devolving upon me by virtue of my appointment without fear, favour, bias, affection, ill-will or prejudice, in accordance with the Constitution and the Law, and under the rule of law, (so help me God).

Sworn/Declared by the said _____

Before me on this _____ day of _____

Chief Justice of the Constitutional Court

SCHEDULE 2

CODE OF CONDUCT

Impartiality and Independence of Commissioners and Staff

1. (1) Every Commissioner and staff member of the Commission shall impartially and independently perform their functions in good faith and without fear, favour or prejudice, and without influence from—
 - (a) the Government;
 - (b) any public officer;
 - (c) any political party;
 - (d) any candidate participating in an election; or
 - (e) any other person or authority.

Independence from Political or Public Office

2. (1) The Commissioners and staff of the Commission shall not, during tenure of office, be eligible for—
 - (a) appointment or nomination to a political office; or
 - (b) appointment to another public office.
- (2) The Commissioners and staff of the Commission—
 - (a) by their membership, association, statement, conduct or in any other manner place in jeopardy the perceived independence of the Commission, or in any other manner harm the credibility, impartiality, independence or integrity of the Commission;
 - (b) make private use of or profit from any confidential information gained as a result of being a Commissioner; or
 - (c) divulge any information to any third party, save in the course of official duty.

Disclosure of Conflicting Interests

3. (1) If a Commissioner or a staff member or a Person Connected to them has a direct or indirect interest in any contract, proposed contract or other matter in a private capacity

(whether personally or via any corporate entity or trust) before the Commission and is present at any meeting of the Commission at which the contract, proposed contract or other matter is the subject of consideration, the Commissioner or staff member shall, at the meeting and as soon as practicable after the commencement thereof, disclose the fact and shall not take part in the consideration or discussion of, or vote on, any questions with respect to the contract or other matter or be counted in the quorum of the meeting during consideration of the matter.

(2) A Commissioner or staff member whose personal interest conflicts with their official duties shall:

(a) in writing, declare the personal interests to their supervisor or other appropriate person or body and comply with any directions given to avoid the conflict; and

(b) refrain from participating in any deliberations with respect to the matter.

(3) No Commissioner or staff member of the Commission shall transact business with the Commission directly or indirectly.

Professionalism

4. (1) The Commissioners and staff of the Commission shall—

(a) perform their duties in a manner that maintains public confidence in the Commission;

(b) treat the public and colleagues with courtesy and respect;

(c) discharge all their duties in a professional, timeous and efficient manner and in line with the rule of law; and

(d) respect the rights and freedom of all persons that he or she may interact with.

Improper Enrichment

5. (1) The Commissioners and staff of the Commission shall not—

(a) use their office or organisation to improperly enrich themselves or others;

(b) accept or request gifts or favours from any person who may have a commercial interest with the Commission or any other interest that may be affected by the normal business of the Commission; or

- (c) use information that is acquired during the course of their duties or connected to their duties for their benefit or for the benefit of others.

Integrity in Private Affairs

- 6. (1) The Commissioners and staff of the Commission shall conduct their private affairs in a manner that maintains public confidence in the integrity of their office and the Commission as a whole and shall:
 - (a) not evade paying taxes;
 - (b) not neglect their financial obligations;
 - (c) submit an annual declaration of their income, assets, interests and liabilities, and that of any person connected to them as defined, to the Administrator of the Commission;
 - (d) not engage in political activity that may compromise or be seen to compromise the neutrality of their office, or the Commission; and
 - (e) not preside over or play a central role in the organisation of a fundraising activity.

Sexual Harassment

- 7. (1) The Commissioners and staff of the Commission shall not sexually harass a member of the public or a colleague. Sexual harassment includes:
 - (a) making a request or exerting pressure for sexual activity or favours;
 - (b) making intentional or careless physical contact that is sexual in nature; or
 - (c) making gestures, jokes or comments, including innuendoes regarding another person's sexuality.

Nepotism

- 8. The Commissioner or staff member shall not practice favouritism on the grounds of race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth or otherwise in performance of their duties.

Privileged Information and Security of Interests of the State

9. The Commissioners and staff of the Commission shall safeguard privileged information that comes into his or her possession and protect it from improper or inadvertent disclosure.

Application of Other Codes of Ethics

10. This Code is in addition to the provisions of any other code of ethics that may apply to the Commissioners and staff of the Commission, and where there is a conflict between such code of ethics and this Act the provisions of this Act shall prevail.

Breach of Code

11. Any breach of this Code by a Commissioner or an staff member of the Commission shall be treated as misconduct.

Disciplinary Code

12. (1) The Administrator shall issue a Disciplinary Code for the Commission providing for the discipline of its staff.
(2) The Disciplinary Code may provide for investigations and for the determination, including by a hearing, of matters that may be in dispute.
(3) The Disciplinary Code may provide for penalties up to and including dismissal and may include provisions for the recovery of costs arising from loss of or damage to property of the Commission.

SCHEDULE 3

